PAUL CHEW SOOI HIN

v.

YEH BROTHERS WOODWORKS (M) SDN. BHD.

HIGH COURT, JOHOR BAHRU
TUAN HAIDAR BIN MOHD NOOR J.
[CIVIL SUIT NO. 22-148-92]
15 FEBRUARY 1994

PRACTICE & PROCEDURE: Defendant ordered to provide further and better particulars of allegations contained in the statement of defence - Failure to do so - Plaintiff's application to strike out offending paragraph in statement of defence - Whether should be allowed - Principles applicable.

The plaintiff was the general manager of the defendants and sued them for wrongful dismissal. By paragraph 3 of the statement of defence, the defendants justified the dismissal by alleging misconduct, that is, neglect and incompetence as a result of which it suffered substantial loss. The plaintiff requested for further and better pariculars of paragraph 3 of the statement of defence and when no reply was forthcoming, the plaintiff sought the aid of the Court to order the defendants to provide the particulars.

The Court ordered the defendants to furnish the particulars and the defendants did so after the time limited for compliance. The plaintiff applied to strike out paragraph 3 of the statement of defence contending that the particulars provided by the defendants were imprecise, incomplete and not in compliance with the order of the Court.

Held:

[1] The function of particulars is to carry into operation the overriding principle that the litigation between the parties, and particularly the trial, should be conducted fairly, openly and without surprises, and incidentally, to reduce costs.

[2] The plaintiff is entitled to know precisely the details of the charges on which the defendants purportedly claimed the right to dismiss him. As the defendants had consented to the order for the furnishing of the particulars, the defendants were obliged to give all the particulars to which the order referred and it was not open to the defendants to withold certain particulars on the grounds that they could not be ordered as a matter of law or practice.

[3] The conduct of the defendants indicates the cavalier attitude that the defendants have taken in respect of the issue of the furnishing of the particulars as ordered by the Court. Though the action to strike out paragraph 3 of the statement of defence would appear to be a drastic measure and unjust, on the contrary there are good grounds put forth by the plaintiff for the Court to do so.

[Plaintiff's application for paragraph 3 of the statement of defence to be struck out allowed with costs].

Case referred to:
Lee Kuan Yew v. Chin Vui Khen [1991] MLJ 498 ***(refd)***
Lucas-Box v. News Group Newspapers Ltd. [1986] 1 WLR 147 / [1986] 1 All ER 177 ***(refd)***

Legislation referred to:
Rules of the High Court 1980, O. 12(7), O. 18 r. 19(1)(c), O. 26 r. 6(3)(b), Form 35

Other sources referred to:
Supreme Court Practice 1991, Vol. 1, pp. 299, 300, 313

For the plaintiff - Nijar; M/s. Nijar & Nijar
For the defendant - C.H. Tok; M/s. Tok & Co.

JUDGMENT

Haidar Bin Mohd Noor J:

In this suit for wrongful dismissal, the plaintiff filed a summons in chambers dated 1 February 1993 (encl. 18) for an order that:

(1) paragraph 3 of the defendant's defence be struck out on the basis of O. 26 r. 6(3)(b), O. 18 r. 19(1)(c) or O. 12(7) of the Rules of the High Court 1980 'RHC' or the inherent jurisdiction of the Court; and
(2) the Court make such consequential or other orders as it may deem just.

The grounds in support are set out therein and the summons is supported by the affidavit of the plaintiff himself.

The relevant paragraph 3 of the defence reads :

> The plaintiff has failed to duly perform his duties in that due to his neglect and/or incompetence, he was incapable of taking care of the defendants' daily affairs and administration and thereby the defendants have suffered substantial loss.

Background facts:

The plaintiff sued the defendant for wrongful dismissal *vide* his statement of claim and writ dated 15 June 1992 (encl. 2). The defendant filled its defence on 8 July 1992 (encl. 6). By paragraph 3 of the defence the defendant justified the dismissal by alleging misconduct, that is, neglect and incompetence as a result of which it suffered substantial loss.

On 13 August 1992, the plaintiff through his solicitors, asked for particulars by letter (exhibit 'PCSH 1'). The particulars asked for are in respect of paragraph 3 of the statement of defence and the particulars to be supplied within 7 days thereof. The defendant failed to do so.

On 18 September 1992, a notice was issued under the summons for direction asking the Court to order that the plaintiff be supplied with the particulars (exhibit 'PSCH 2') by the defendant.

On 16 November 1992, the Court ordered that particulars be furnished in respect of paragraph 3 of the statement of defence within 14 days, that is, by 30 November 1992 (exhibit 'PCSH 3'). The order was obtained with the consent of the defendant and in fact the Counsel for the plaintiff mentioned on behalf of the Counsel for the defendant. The defendant failed to comply with the said Court order. Instead, the defendant through its solicitor's letter dated 12 December 1992 promised to supply the further and better particulars on 16 December 1992 (exhibit 'PCSH 4'). Finally, by fax on 16 December 1992 (exhibit 'A' to encl. 21) the defendant provided the particulars which according to the plaintiff are imprecise and incomplete and not in compliance with the said order of the Court. Having examined exhibit 'A' and the said order of the Court, I am inclined to agree with the contention of the plaintiff's Counsel. At paragraph 3 of the affidavit of Yeh Hsin, a director of the defendant (encl. 21), he tried to explain the delay in furnishing the particulars as ordered by the Court by deposing that it was due to the loss of a number of relevant documents. If this is true then the defendant should not have consented to supply the particulars within the time as agreed in the summons for directions. In the next breath by way of paragraph 4 of his affidavit, Yeh Hsin deposed that the defendant had complied with the said order of the Court. In fact in exhibit 'A' at the last paragraph thereof, the defendant's solicitors stated "kindly be informed that our clients will at the trial provide the full details of the many instances of your client's failure, neglect and incompetence in the performance of his duties as the general manager of the defendants."

As has been stated in the **Supreme Court Practice 1991,** Vol. 1 at p. 299 the function of particulars is to carry into operation the overriding principle that the litigation between the parties, and particularly the trial, should be conducted fairly, openly and without surprises and incidentally to reduce costs. At page 300, it is stated:

> And whenever either party is imputing fraud, negligence, or misconduct to his opponent, the facts must be stated with especial particularity and care. **Thus in an action for wrongful dismissal on the ground that the servant was incompetent or dishonest must state the charge specifically and in detail** (emphasis is mine)

The law with regard to particulars was considered by Siti Norma, J. in *Lee Kuan Yew v. Chin Vul Khe*n [1991] MLJ at p. 498 where the judgment of Lord Ackner, LJ in *Lucas-Box v. News Group Newspapers Ltd.* [1986] 1 WLR 147; [1986] 1 All ER 177 was quoted with approval:

> It is axiomatic that the function of pleadings is to define the issues between the parties, so that the plaintiff and the defendant know what is the other side's case and thus everyone, Counsel, Judge and jury are able to focus upon the real nature of the dispute. Although to one it may mean a startling observation, we can see no reason why libel litigation should be immune from ordinary pleading rules.

Likewise in this case the plaintiff is entitled to know precisely the details of the charges on which the defendant purportedly claimed the right to dismiss him. It seems clear to me that the defendant has not provided the particulars as in respect of paragraphs (d) and (e) in encl. 9 and in respect of paragraphs (a) and (c) the particulars given were not in compliance with the said order of the Court because what was requested for is every act of misconduct. It is not now open to the defendant to contend that certain particulars could not be ordered as a matter of law or practice but he will be obliged to give all the particulars to which the consent order refers (see page 313 of the **Supreme**

Court Practice 1991, Vol. 1 Part 1). If the said Court order for particulars be served within a certain time is not complied with, the Court has the power to order that the action shall stand dismissed or the defence be struck out or the allegation of which particulars were ordered should be struck out from the pleading (see page 313 of the **Supreme Court Practice 1991,** Vol. 1 Part 1).

The defendant contended that striking out paragraph 3 of the statement of defence is a drastic measure and urged the Court to exercise its inherent jurisdiction. From the conduct of the defendant in this case I am of the view that all opportunities were given to the defendant to furnish the particulars as far back as 1992 wherein there was not even a reply to the letter (exhibit 'PCSH 5'). The particulars were not even furnished by way of Form 35. The conduct of the defendant indicates the cavalier attitude that the defendant has taken in respect of the issue on the furnishing of the particulars as ordered by the Court and with the consent of the defendant itself. Though the action to strike out paragraph 3 of the statement of defence would appear to be a drastic measure and unjust, on the contrary there are good grounds put forth by the plaintiff for the Court to do so.

In the circumstances of the case I ordered that paragraph 3 of the statement of defence be struck out with costs to the plaintiff. I did not make any consequential order as it is left to the plaintiff to take further steps as he deems fit.

PENVEST HOLDINGS (M) SDN. BHD.

v.

YAYASAN PELAJARAN JOHOR

HIGH COURT, JOHOR BAHRU
TUAN HAIDAR BIN MOHD NOOR J.
[ORIGINATING SUMMONS NO. 24-183 OF 1990]
19 FEBRUARY 1994

CONTRACT: Agreement for sale and purchase of land - Sale subject to fulfillment of conditions - Failure by purchaser to pay balance of purchase price - Purchaser alleging frustration of contract due to non-performance of conditions - Whether frustration made out - Whether purchaser entitled to return of deposit and damages.

PRACTICE & PROCEDURE: Application to strike out under O. 18 r. 19 RHC 1980 - Whether plaintiff's action obviously unsustainable.

The plaintiff and the defendant entered into a agreement (CTK-1) for the sale of lands belonging to the defendant. The agreement was subject to the conditions that:

(1) approval be obtained from the State Authority to remove the restriction in interest on the title; and

(2) approval be obtained from the Foreign Investment Committee for the purchase of the said lands.

The plaintiff paid 10% of the purchase price as deposit at the time of signing the agreement and the defendant called for the payment of the balance of the purchase price after having satisfied the conditions.

It was subsequently discovered that the buildings to be erected on the said lands were wrongly described in the original layout plan and the plaintiff requested for and obtained an extension of time to pay the balance purchase price until after the layout plan was amended.

The plaintiff failed to pay the balance purchase price after the amendment and filed the action seeking declarations, *inter alia*, that they were entitled to the return of the deposit and that the said agreement was void and of no effect and/or that it has been frustrated.

The defendant applied to strike out the plaintiff's claim under O. 18 r. 19 of the Rules of the High Court 1980.